IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.161 of 2005 (O&M)

Date of Decision: August 30, 2007

Joginder Singh

Petitioner

VERSUS

State of Punjab

Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.P.Dhir, Advocate and
Ms.Simsi Dhir, Advocate
for the petitioner.

Mr.M.C.Berry, Sr.DAG, Punjab.

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RANJIT SINGH J.

The petitioner has filed this revision petition impugning his conviction for an offence under Section 338 IPC and the sentence of six months R.I. awarded to him. The petitioner

remained unsuccessful in his appeal and has now filed this revision petition. The petition stands admitted since 17.2.2005.

The petitioner, who was working as a constable in Punjab police, has filed a miscellaneous petition No.7908 of 2007 praying for suspension of his conviction during the pendency of the revision petition as he has been dismissed from the service on the basis of conviction and award of sentence. The sentence awarded to the petitioner has already been suspended at the time of admitting this petition. Instead of passing any order on the application seeking stay of conviction, it was considered appropriate to hear the main revision petition. It is in this background that main revision petition itself is taken up for hearing.

The facts, in brief, are that on 26.1.1997, the petitioner, as a gunman of Sumandeep Singh, ASI, had gone to Sehnai Palace, Kapurthala to attend the marriage of the daughter of Mohinder Singh. Madan Singh, complainant, was also present there. The drinks were also being served at a large scale. At about 4 p.m. Madan Singh heard a noise of a short being fired and noticed that the bullet had hit his left knee.One Gopal Dass son of Ujjagar Singh, who was present nearby, also suffered bullet injury. Madan Singh complainant noticed one person standing in the marriage party, holding a stengun in his hand. Later on he came to know his name as Joginder Singh, working as a constable in the Police Department. A vehicle was arranged and Madan Singh was taken to Civil Hospital, Kapurthala. On a complaint made by him, the FIR was registered. During the

course of investigation it revealed that Sumandeep Singh ASI was in the process of taking stengun from petitioner Joginer Singh, Constable and during this process, a shot got fired accidently. This stengun was issued in the name of petitioner -Joginder Singh. It was recovered along with magazine containing 18 bullets. The stengun and the bullets recovered were sealed in a parcel. The petitioner was arrested. After investigation, he was challaned under Section 338 IPC.

The case of the prosecution was supported by the evidence of a doctor and the injured. Madan Singh (PW-3) complainant and other witnesses lend support to the prosecution case and to the recovery of weapon etc. The incriminating circumstances were put to the petitioner who pleaded false implication. The petitioner also stated that no shot was fired from his carbine. Rather, he examined Gopal Dass (DW-2), one of the injured, in support of his case. The trial Court, however, convicted him and sentenced him to suffer six months R.I. coupled with fine of Rs.500/-. Appeal of the petitioner was dismissed and that is how the petitioner has filed the present petition.

Mr.Dhir, appearing for the petitioner, submits that the prosecution was not able to establish the case against the petitioner to the hilt. He points out that the prosecution never made any effort to send the weapon for examination by the Ballistic Expert and, as such, it could not be established that any bullet was fired from the carbine. Counsel further says that version of the solitary witness, produced by the prosecution, cannot be believed in entirety in view

of the improvement and contradictions noticed therein. Counsel also points out that one of the injured witness had appeared to support the case of the petitioner by appearing as a defence witness. From this, the counsel says that it would go to cast a doubt on the prosecution story and as such the petitioner is entitled to be acquitted on the ground that the prosecution was not able to prove the charge beyond reasonable doubt.

Mr. Berry, appearing for the State, however points out that injured witness Madan Singh (PW-3) appeared before the Court and supported the version of the prosecution. Mr. Berry further points out that on account of the bullet injury, Madan Singh had to receive treatment from various hospitals, ultimately leading to amputation of his leg. Madan Singh has also filed a case for grant of compensation on account of 80% disability suffered by him and accordingly, a sum of Rs.4 lacs has been awarded which is required to be paid to him by the petitioner and ASI Sumandeep Singh. Accordingly, Mr. Berry says that the case of the prosecution is proved by reliable and cogent evidence and hence no interference in the revision is called for.

I have considered the rival contentions raised before me.

Admittedly, it is a case of accident. No other offences or different allegations are made against the petitioner. The petitioner has not denied his presence at the scene of the incident. However, he has denied if any bullet was fired from his weapon. The evidence of Madan Singh (PW-3) only indicates that he had heard a sound of fire and then had noticed injury on his leg. He also noticed that

Gopal Dass (DW-2) was also injured. At that stage he saw the petitioner carrying a carbine.

With the assistance of Mr.Dhir and Mr.Berry, I have perused the evidence led by the parties, though the record has not been summoned. It is seen that PW-3 made an attempt to give an improved version before the Court. Earlier PW-3 had mentioned only the facts as noted above in regard to the manner of injuries received by him, but before the Court he said that the shot was fired from the carbine carried by petitioner-Joginder Singh. The attention of this witness was accordingly drawn to his previous statement where this aspect was not found recorded. PW-3 further tried to introduce the fact that perhaps petitioner Joginer Singh was drunk at that time. This fact was also not mentioned by the witness in his first statement, on the basis of which the FIR was recorded. It is thus seen that PW-3 has made an attempt to give an improved version before the Court. His first version, on the basis of which the FIR was recorded, appears to be a spontaneous account of the events. From this, it is seen that he has not seen the bullet having been fired from the weapon carried by the petitioner. This aspect of the evidence could have been proved by the prosecution by ensuring examination of the weapon by Ballistic Expert. Unfortunately, the prosecution did not do so. In the absence of examination of weapon, it cannot be said with certainty that the bullet, which hit PW-3, indeed was fired from the weapon carried by the petitioner. In fact PW-3 again made an attempt to say that the weapon, which was produced

as a case property, was the one which was carried by the petitioner. During his cross-examination, he could not satisfactorily explain that this was the same weapon as he has never noted down the number of weapon or other details, from which he could have been in a position to identify the same. Gopal Dass (DW-1), the second injured person, however, did not lend much support to the case of the prosecution. He did not see the bullet being fired from the weapon carried by the petitioner Joginder Singh. He further brought out that large number of other police persons with weapons were present there. In this view of the evidence, it was incumbent upon the prosecution to lead relevant evidence in this regard to rule out the possibility of bullet having been fired from some other weapon.

Mr. Berry points out that the petitioner was given 21 bullets whereas only 18 were found available with him after the incident. From this, Mr. Berry wishes to urge that the shot indeed was fired from the weapon carried by the petitioner. From this circumstance alone, it is not sufficient to say that bullet was fired from the weapon carried by the petitioner. Possibility cannot be ruled out that these bullets might have been lost by the petitioner. To rule out the possibility of bullets having been fired from other weapon it was incumbent upon the prosecution to get this weapon examined from Ballistic Expert.

Taking the totality of evidence into consideration, I am of the view that the prosecution was not able to prove its case beyond a shadow of reasonable doubt. The Courts below appear to have not examined the case in proper perspective and have misread the

evidence to convict the petitioner. This petition deserves to be allowed. The judgment of the trial Court as well as that of the Appellate Court are set aside and the petitioner acquitted of the charge.

Before parting, I wish to clarify one aspect of the case. On the basis of evidence led before the civil Court, compensation of Rs.4 lacs has been awarded, which is required to be paid by the petitioner and Sumandeep ASI. As a matter of abundant caution, it is clarified that the present order would not have any effect on the compensation awarded or the liability fastened on to the petitioner to pay the same. Needless to mention that the standard of proof in a criminal trial and for deciding civil liability are different it being much more onerous in a criminal case. Even otherwise, the petitioner, who is present in the Court, forthrightly submits that he would not challenge the order granting compensation on the basis of the order passed in present petition.

This revision petition, accordingly, is allowed in the above terms.

(RANJIT SINGH)
JUDGE

August 30, 2007
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